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FEB 24 2006

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24 Feb 2006

In regards to: Patent Application 10/800,789

Director  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Subject: Reply/Rebuttal to Advisory Action mailed on 13 Feb 2006 (page 1 of 4)

Dear Sir or Ma'am,

This is my third request for a review outside and above the purview of Sandra O'Shea, Mark Tsidulko and John Ward. I would not be making this request for the third time if it wasn't for the numerous inaccuracies in the correspondence that I received from them. Additionally I believe the review of my patent application and correspondence has been unjustly handled by them from the very beginning. Everything that follows is respectfully submitted in response to the Advisory Action I received on 16 Feb 2006. On 16 Nov 2005 the USPTO mailed the second Final Office Action Summary and I received it on 19 Nov 2005. On 20 Dec 2005 (31 days later) I faxed my rebuttal (10 pages) dated 20 Dec 2005 and supporting documentation (9 pages) to the USPTO. On 16 Feb 2006 I received an Advisory Action which has 3 boxes checked and eight (8) lines of explanation on the Continuation Sheet. I respectfully request a thorough review of why it took so long for this very short response? It is my belief that Sandra O'Shea and/or Mark Tsidulko purposely and intentionally mailed the Advisory Action 3 days before the Shortened Statutory Period For Reply (3 months) was set to expire. I offer as proof that the three earlier USPTO responses took 6, 16, and 24 duty days respectfully to be mailed - a substantially shorter time frame than the Advisory Action took. Therefore I respectfully request an extension of time for the Shortened Statutory Period For Reply. On the Advisory Action Continuation Sheet it states: "Applicant's arguments are not persuasive." I request a full explanation as the small amount of information that follows does not clarify this claim. Please reference and review my rebuttal and supporting documentation mentioned above (all documentation is available upon request). In response to the examiner's second Final Office Action I provided valid counter arguments in my rebuttal with references to specific patent rules and included supporting documentation originating from the USPTO. Documented next on the Advisory Action Continuation Sheet: "Since you insist that your lighting device is to obtain a particular ornamental design (formed of two cats only), please note, that it relates to design patent application only, not a utility patent which is what you had filed. In a design patent application, the subject matter which is claimed is the design embodied in or applied to an article of manufacture and not the article itself (see MPEP, chapter

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1500)." Please reference my six (6) page rebuttal "Subject: Reply to Final Office Action Summary (Page 1 of 6)" dated 12 Oct 2005 and faxed to the USPTO on 13 Oct 2005. On page 5 of that letter in response to the examiner's statement "Difference between the "Utility patent" and "Design Patent" Applicant can find in the MPEP, chapter 1500." I responded with the following "...Further, I considered both types of patents before submitting my patent application. I built a fully functional prototype that uses an electrical circuit that powers light elements (in two colors) that illuminate a pleasing visual effect of two cats sitting together to form one heart shape with their bodies, paws and tails. Therefore I seek the **stronger and broader** utility patent protection to protect the **electrical functionality** of my invention." Based on this information (the examiner's initial reference to MPEP chapter 1500), the question is why did the examiner respond with a new Final Office Action Summary citing 3 new prior art references? Further, I request clarification for the following that is documented next on the Advisory Action Continuation Sheet: "The differences of opinion can be justly resolved by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of prior art deficiencies in the disclosure set forth in the application, an appeal procedure within the Office and to the courts has long been provided by statute (see MPEP, chapter 1200). Disagreement with rejection of claim of the instant application is appealable." This can be understood in two ways. One, with the statement "Where the differences of opinion concern the denial of patent claims because of prior art deficiencies in the disclosure set forth in the application,..." does the examiner mean "prior art deficiencies in the discloser" in relation to the 3 new references he cited? Or two, does the examiner mean "prior art deficiencies in the discloser" in relation to the way the application was written? If number one applies then I stand by my entire 10 page rebuttal in response and I will appeal to the courts with my 10 page rebuttal. If number two applies then the Advisory Action is misleading and incorrect for the following reasons. In my 10 page rebuttal I presented valid arguments with supporting documentation that proves the examiner made incorrect statements under the "Specification" heading of the second Final Office Action Summary. Under the "Arrangement of the Specification" heading the examiner referenced 37 CFR 1.77(b), "the specification of a utility application **"should"** include the following sections in order." "Should" does not mean the sections **"must"** be included exactly as suggested. Please have the examiner clarify what he/she meant with this statement on the Advisory Action. As far as the second half of the statement in the Advisory Action "...an appeal procedure within the Office and to the courts has long been provided by statute (see MPEP, chapter 1200)." The first Office Action Summary included the first (1<sup>st</sup>) claim rejections subsequently the first Final Office Action Summary included the second (2<sup>nd</sup>) claim rejections. According to patent rules twice rejected is needed for an appeal. However, I presented my 6 page rebuttal dated 12 Oct 2005 in response to the first Final Office Action and it was acknowledged as persuasive. And in response to my rebuttal the examiner responded with an immediate second Final Office Action Summary citing three (3) new references. The second Final Office Action Summary is now at issue. I will appeal and offer to the courts my 10 page rebuttal (dated 20 Dec 2005) that

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includes 9 pages of supporting documentation. In this rebuttal I provided evidence that I believe proves the examiner's claim rejections invalid and other statements documented invalid. I also identified several errors documented by the examiner on the second Final Office Action Summary Sheet. Under the Status heading of the second Final Office Action Summary the examiner checked box 1 "Responsive to communication(s) filed on 15 August 2005." This date is absolutely inaccurate and may be one of the factors that caused the examiner to make subsequent errors. Chronologically the following events occurred after 15 August 2005 (I have copies of all correspondence). On 6 Sep 2005 I faxed a **claim amendment document** to the USPTO. In response on 27 Sep 2005 the USPTO sent the first Final Office Action Summary. In response to that first Final Office Action Summary on 13 Oct 2005 I faxed my 6 page rebuttal dated 12 Oct 2005 including a 4 page **claim amendment document**. This was when I successfully rebutted the examiner's claim rejections (prior art reference – Lamparter, US 5,604,480). In response the USPTO mailed the immediate **second** Final Office Action Summary (with 3 new references cited) on 16 Nov 2005. I responded with my 10 page rebuttal and 9 pages of supporting documentation on 20 Dec 2005. I then waited 38 duty days to receive the Advisory Action (mailed on 13 Feb 2006). Further, under the Application Papers heading box 10 "The drawing(s) filed on 16 March 2004 is/are: b) objected to by the Examiner." This is incorrect as I provided evidence that my drawing was correctly submitted in my most recent rebuttal. Also, under this same heading box 9 "The specification is objected to by the examiner." Based on the evidence I provided against the statements made by the examiner in the second Final Office Action Summary this box should not be checked. As I stated in my most recent rebuttal, the previous two Office Action Summaries document acceptance of my drawing and the specification was not objected to. Further, my 10 page rebuttal identified the fact that the examiner acknowledged my claim amendment document faxed on 15 Aug 2005, but did not acknowledge my two subsequent amendment documents that were submitted after 15 Aug 2005. Therefore how can the second Final Office Action Summary be legally final when it doesn't even address the most recent amendment document? If the examiner based his second Final Office Action Summary on the documents I faxed on 15 Aug 2005 there has been a serious gross mistake. For the reasons stated above, I do not recognize the second Final Office Action Summary to be an official or valid document. I do not believe the courts will recognize this document to be valid either. Therefore I request that the finality of the second Final Office Action Summary be thoroughly and impeccably reconsidered. Considering all the effort I have put forth I deserve nothing less from the USPTO. Nor will I accept it. Finally I will never abandon my claim that I am the original inventor of the Cats' Heart Shape Night Light ©. For the record, it is apparent to me (from the very start) that the USPTO (specifically Art Unit 2875) was and still is trying to force my specification (patent application) and patent claim into abandonment through the use of complex legal patent rules, imposed monetary expenses and time constraints. Based on the correspondence that I received from the USPTO, I believe that there has been bias against me because I have been my own legal counsel (i.e. I have not hired a patent attorney to date). As I stated in my early correspondence

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with the USPTO, copyright protection laws apply to my specification (patent application), my drawing and my photos (as submitted). As I stated in my specification (patent application), I have registered Cats' Heart Shape © drawings on file with the US Library of Congress dating back to 1993. The USPTO must abide by these copyright laws when posting my application (specification), drawing and photos to any USPTO website or affiliated website and when offering it to the public in any form of print whatsoever. This is official notification that I will not wait for a response to this letter. Due to time constraints, I will proceed with the appeal process and present my 10 page rebuttal and 9 pages of supporting documentation to the courts. This correspondence will also be sent via certified mail in the next few days. Respectfully submitted for your review and prompt action.

*Mark A. Court*

Mark A. Court  
Patent Application 10/800,789  
Inventor of the "Cats' Heart Shape Night Light" ©